senger on a street car, that she signaled the car to stop at the intersection of two streets, that in response to her signal the car was stopped, that while she was attempting to alight and had partially alighted from the car which was a summer car, and was receiving a package or bundle which was being handed to her by another passenger, the motorman and conductor in charge of the car negligently started it before plaintiff had gotten clear of the car and had moved to a place of safety, that the track was curved, and that the rear portion of the car swinging on the curve struck plaintiff, and injured her, states a cause of action showing the negligence charged, and that plaintiff was not given an opportunity to reach a place of safety.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1273, 1275½; Dec. Dig. § 314 (5); Negligence, Cent. Dig. § 182.* 2 Va.-W. Va. Enc. Dig. 721.]

2. Carriers (§ 247 (4)*)—Carriage of Passengers—Termination of Relation.—The relation of carrier and passenger does not terminate until after the passenger has alighted from the car and has had reasonable opportunity to reach a place of safety.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 991, 992; Dec. Dig. § 247 (4).* 2 Va.-W. Va. Enc. Dig. 702.]

3. Carriers (§ 314 (2)*)—Carriage of Passengers—Actions—Declaration.—While it is not sufficient merely to allege negligence in general terms, a declaration in a passenger's action is sufficient if the facts alleged show that the accident was not one which would have ordinarily occurred had reasonable care been exercised.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1273, 1275½; Dec. Dig. § 314 (2); Negligence, Cent. Dig. § 182.* 2 Va.-W. Va. Enc. Dig. 721.]

Error to Circuit Court of City of Lynchburg.

Action by Easter Houston against the Lynchburg Traction & Light Company. A demurrer was sustained to the declaration, and plaintiff brings error. Reversed.

Thos. J. O'Brien and *Don P. Halsey,* both of Lynchburg, for plaintiff in error.

Coleman, Easley & Coleman, of Lynchburg, for defendant in error.

SMITH *v.* WOLSIEFER.

June 8, 1916.

[89 S. E. 115.]

1. Pleading (§ 306*)—Written Instruments—Oyer.—The right to crave oyer of papers mentioned in a pleading applies only to specialties and letters of probate and administration, not to other writ-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ings, and only applies to a deed when the party pleading relies upon the direct and intrinsic operation of the deed.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 918-929; Dec. Dig. § 306.* 11 Va.-W. Va. Enc. Dig. 384.]

2. Pleading (§ 420 (1)*)—Objections—Waiver.—In suit for injuries caused by a landlord's failure to repair, where both parties were sui juris, and, upon defendant's craving oyer of the lease, consented that the trial court consider it as part of the declaration, and the court passed upon the demurrer to the declaration with the lease introduced into it, plaintiff waived any objection, and the matter will be treated as an amendment made to the declaration by consent of all parties.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1408; Dec. Dig. § 420 (1).* 1 Va.-W. Va. Enc. Dig. 345.]

3. Pleading (§ 48*)—Demurrer—Admission.—On demurrer the declaration must be taken as it is, and, if all its averments may be true without imposing a legal liability on the defendant, the demurrer must be sustained.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 105, 106; Dec. Dig. § 48.* 4 Va.-W. Va. Enc. Dig. 471.]

4. Landlord and Tenant (§ 39*)—Lease—Construction—Preliminary Negotiations—Merger.—All oral negotiations and agreements preceding the execution of a deed of lease must be taken merely as preliminaries, and the contract between the parties must be looked for in the terms of the lease.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 101-103; Dec. Dig. § 39.* 9 Va.-W. Va. Enc. Dig. 128.]

5. Landlord and Tenant (§ 167 (1)*)—Obligation of Landlord—Strangers and Invitees of Lessee.—The obligation imposed on the lessor of premises is different with respect to those who come upon them as strangers and those who come there upon the license or invitation of the lessee.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 668, 679; Dec. Dig. § 167 (1).* 11 Va.-W. Va. Enc. Dig. 166.]

6. Landlord and Tenant (§ 169 (3)*)—Action for Injuries—Pleading.—In an action against a landlord for injuries from failure to repair the leased premises, the allegation in the second count of the declaration that defendant, with knowledge that steps were in unsafe condition, did not disclose the same to plaintiff or the lessees, but suppressed all knowledge of the condition, was nullified by the averment of the same count that at the time of entering into the lease the landlord expressly covenanted, upon signing, to repair the defect.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 644, 664, 682; Dec. Dig. § 169 (3).* 11 Va.-W. Va. Enc. Dig. 160.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Landlord and Tenant (§ 167 (8)*)—Personal Injuries—Right of Recovery.—One injured by a lessor's failure to repair the premises, he being a member of the lessee's family, or there by the lessee's invitation, stood in the shoes of the lessee, with respect to his right to recover from the lessor.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 676, 679; Dec. Dig. § 167 (8).* 11 Va.-W. Va. Enc. Dig. 166.]

8. Landlord and Tenant (§ 164 (6, 7), 167 (8)*)—Personal Injuries—Liability.—On the lessor's surrender of control of the premises to a lessee, in the absence of warranty of condition, or fraudulent concealment of known defects, or agreement to repair, he is free from liability to the lessee, and to those whom the lessee invites upon the premises, for injuries caused by defects which could have been discovered by the lessee on reasonable inspection at the time of surrender.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 641, 676, 679; Dec. Dig. § 164 (6, 7), 167 (8).* 11 Va.-W. Va. Enc. Dig. 159.]

9. Landlord and Tenant (§ 164 (1)*)—Personal Injuries—Liability.—Where there is some latent defect in leased premises, such as an original structural weakness, or decay, or the presence of an infectious disease, which was known to the lessor, and not to the lessee, nor discoverable by him on a reasonable inspection, the lessor is liable for injuries resulting; it being his duty to disclose the defect.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 630, 634-637; Dec. Dig. § 164 (1).* 11 Va.-W. Va. Enc. Dig. 159.]

10. Landlord and Tenant (§ 167 (2)*)—Personal Injuries—Liability.—A lessor, after his surrender of control to the lessee, though the latter covenants to repair, is liable to third persons for injuries caused by the premises being at the time of surrender in a condition dangerous to the public, or with a nuisance upon them, or in such condition that they must necessarily become a nuisance by user.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 669, 679; Dec. Dig. § 167 (2).* 11 Va.-W. Va. Enc. Dig. 166.]

11. Landlord and Tenant (§ 169 (3)*)—Actions for Injuries—Pleading.—In an action against a landlord for injuries caused by the defective condition of the leased premises, where plaintiff relied upon his right to recover in the capacity of a third person or stranger to the lease, the fact should have been averred.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 644, 664, 682; Dec. Dig. § 169 (3).* 11 Va.-W. Va. Enc. Dig. 166.]

Error to Law and Equity Court of City of Richmond.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Action by James H. Smith against Adam Wolsiefer. To review a judgment for defendant, plaintiff brings error. Affirmed.

C. R. Sands and *Ordway Puller*, both of Richmond, for plaintiff in error.

Lamb & Lamb, of Richmond, for defendant in error.

CULPEPER NAT. BANK, Inc. *v.* TIDEWATER IMPROVEMENT CO., Inc.

June 8, 1916.

[89 S. E. 118.]

1. Corporations (§ 508*)—Plea to Jurisdiction by Corporation—Made through Attorney.—A plea in abatement to the court's jurisdiction by a corporate defendant must be filed through its attorney, and not in the corporation's name.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 2001-2005; Dec. Dig. § 508.* 10 Va.-W. Va. Enc. Dig. 576.]

2. Banks and Banking (§ 118*)—Knowledge of Officer as Notice to Bank—Officer Interested Adversely.—Where a bank officer seeks to defraud both his bank and a third party, it is presumed he did not communicate his knowledge regarding the fraudulent transaction to the bank, and it is not chargeable with constructive notice thereof.

[Ed. Note.—For other cases, see Banks and Banking, Dec. Dig. § 118.* 3 Va.-W. Va. Enc. Dig. 568.]

3. Banks and Banking (§ 227 (3)*)—Discounts—Agreement to Apply Proceeds—Sufficiency of Evidence.—In an action by the maker of a note against a bank which discounted the note, crediting the proceeds to its codefendant, one Smith, who was then an officer of both parties, held the evidence does not sustain a verdict finding that the bank promised to deposit the proceeds to the maker's credit.

[Ed. Note.—For other cases, see Banks and Banking, Dec. Dig. § 227 (3).* 2 Va.-W. Va. Enc. Dig. 272.]

4. Limitation of Actions (§ 46 (6)*)—Accrual of Right of Action—Wrong Application of Proceeds of Discounted Note.—In an action against a bank for failing to place the proceeds of a discounted note to the maker's credit, the statute of limitations runs from the date banking transactions ceased between the parties, and plaintiff was furnished with a statement showing no funds to its credit.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 245; Dec. Dig. § 46 (6).* 9 Va.-W. Va. Enc. Dig. 393.]

5. Limitation of Actions (§ 99 (1)*)—Computation of Period—Obstructing Prosecution of Suit.—Under Code 1904, § 2933, suspend-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.